

**SOAH DOCKET NO. 453-05-4298.M4
MDR Tracking No. M4-04-8049-01**

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|--|---|--------------------------------|
| STATE OFFICE OF RISK MANAGEMENT, Petitioner | § | BEFORE THE STATE OFFICE |
| | § | |
| | § | |
| V. | § | OF |
| | § | |
| RS MEDICAL, Respondent | § | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

This case concerns the proper level of reimbursement for the rental and subsequent purchase of an RS4i neuromuscular stimulator, a piece of durable medical equipment (DME). The Administrative Law Judge (ALJ) concludes reimbursement should be at the amounts billed by the Respondent, RS Medical.

I. FACTUAL AND PROCEDURAL HISTORY

Workers' compensation claimant __ (the Claimant) suffered a compensable injury on __, __. Because he continued to suffer from pain in the thoracic spine area, his treating physician, on March 30, 2003, prescribed use of the RS4i neuromuscular stimulator. The purposes for which he prescribed the unit were to decrease pain and spasms, increase range of motion and local blood flow, retard disuse and atrophy, and re-educate muscles.¹

¹ Respondent's Ex. 1 at 21.

The Claimant rented the unit for two months and then purchased it. RS Medical submitted a request for reimbursement to the Petitioner, the State Office of Risk Management (SORM). SORM provided reimbursement, but at levels less than those claimed by RS Medical. The amounts billed, the reimbursement provided, and the amounts in dispute are shown below:

| <u>Date of Service</u> | <u>CPT CODE</u> | <u>Amt. Billed</u> | <u>Amt. Paid</u> | <u>Amt. in Dispute</u> |
|-------------------------|-----------------|--------------------|------------------|------------------------|
| 4-30-03 | E1399 | \$ 250.00 | \$150.00 | \$ 100.00 |
| 5-30-03 | E1399 | 250.00 | 150.00 | 100.00 |
| 7-14-03 | E1399 | 2,495.00 | 1,050.00 | <u>1,445.00</u> |
| Total Amount in Dispute | | | | \$1,645.00 |

RS Medical filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission).² The Commission's Medical Review Division found in favor of RS Medical and ordered SORM to reimburse RS Medical the additional \$1,645.00. SORM filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

After proper notice was given, the hearing was convened, jointly with other cases,³ on September 19, 2005, with ALJ Henry D. Card presiding. The taped hearing, including the testimony, from a previous case, Docket No. 453-05-3779.M4, was admitted into evidence and the parties presented arguments. The hearing was adjourned and the record closed the same day.

Under 28 TEX. ADMIN. CODE § 148.14(a), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.

² Under legislation effective September 1, 2005, the Texas Workers' Compensation Commission was abolished and its functions transferred to the Division of Workers' Compensation at the Texas Department of Insurance.

³ Docket Nos. 453-05-3407.M4, 453-05-4170.M4, and 453-05-4322.M4.

II. DISCUSSION

Under Paragraph IV of the 1996 DME Ground Rules, which apply to this case, there is no specific maximum allowable reimbursement (MAR) amount for DME items. Instead, Paragraph IV states, in pertinent part,

. . . the insurance carrier shall reimburse the DME provider at. . . , if there is no pre-negotiated amount, the fair and reasonable rate for the item described. Use the miscellaneous HCPCS code, E1399, when no other HCPCS code is present for the DME. . . .

The pertinent portion of Subsection C of Paragraph IX of the 1996 DME Ground Rules reads as follows:

. . . Reimbursement shall be an amount pre-negotiated between the provider and carrier or if there is no pre-negotiated amount, the fair and reasonable rate. A fair and reasonable reimbursement shall be the same as the fees set for the “D” codes in the 1991 [MFG].

RS Medical submitted its request for reimbursement using Code E1399. SORM reimbursed RS Medical, however, at the rates for a muscle stimulator alone. RS Medical contended the RS4i is not just a muscle stimulator, but a sequential device that incorporates both a muscle stimulation modality and an interferential modality. Because there is no “D” code for such a dual-modality DME, it should be reimbursed at a fair and reasonable rate. RS Medical argued its billed rates are fair and reasonable.

SORM asserted the RS4i is equivalent to a muscle stimulator only and should be reimbursed accordingly. It argued the RS4i had received an exemption from Food and Drug Administration (FDA) premarket testing requirements by virtue of its similarity to muscle stimulators already on the market. It further argued the interferential modality does not provide any curative effects beyond those provided by the muscle stimulation modality.

SORM's witness, Joel D. Wilk, M.D., agreed the interferential modality is different from the muscle stimulation modality, although he did not agree that the additional modality provided additional benefits. RS Medical provided documentation from the FDA that acknowledges both modalities. That documentation also indicates, as did RS Medical witness Susan Keese, that the muscle stimulation modality is useful in relaxing muscle spasms, increasing range of motion, and increasing local blood supply, while the interferential current modality is useful in providing acute pain relief and in managing chronic pain.

Based on the evidence, the ALJ finds the RS4i is a dual modality DME device that is not equivalent to a muscle stimulator only. The ALJ therefore concludes SORM did not meet its burden of proving the RS4i should be reimbursed at a level equivalent to a muscle stimulator. He further finds the rates at which RS Medical billed, which are its usual rates, to be fair and reasonable. Therefore, he orders SORM to reimburse RS Medical for the disputed dates of service at the billed amounts.

III. FINDINGS OF FACT

1. Workers' compensation claimant___. (the Claimant) suffered a compensable injury on ___,__.
2. Because the Claimant continued to suffer from pain in the thoracic spine area, his treating physician, on March 30, 2003, prescribed use of the RS4i neuromuscular stimulator.
3. The purposes for which the treating physician prescribed the unit were to decrease pain and spasms, increase range of motion and local blood flow, retard disuse and atrophy, and re-educate muscles.
4. The Claimant rented the unit for two months and then purchased it.
5. RS Medical submitted a request for reimbursement to the Petitioner, the State Office of Risk Management (SORM). SORM provided reimbursement, but at levels less than those claimed by RS Medical.

6. The amounts billed, the reimbursement provided, and the amounts in dispute are shown below:

| <u>Date of Service</u> | <u>CPT CODE</u> | <u>Amt. Billed</u> | <u>Amt. Paid</u> | <u>Amt. in Dispute</u> |
|-------------------------|-----------------|--------------------|------------------|------------------------|
| 4-30-03 | E1399 | \$ 250.00 | \$150.00 | \$ 100.00 |
| 5-30-03 | E1399 | 250.00 | 150.00 | 100.00 |
| 7-17-03 | E1399 | 2,495.00 | 1,050.00 | <u>1,445.00</u> |
| Total Amount in Dispute | | | | \$1,645.00 |

7. RS Medical filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission).
8. The Commission's Medical Review Division found in favor of RS Medical and ordered SORM to reimburse RS Medical the additional \$1,645.00.
9. SORM filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing was sent to the parties March 1, 2005.
11. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
12. The hearing was convened, jointly with other cases, on September 19, 2005, with ALJ Henry D. Card presiding. The taped hearing, including the testimony, from a previous case, Docket No. 453-05-3779.M4, was admitted into evidence and the parties presented arguments. The hearing was adjourned and the record closed the same day.
13. The RS4i is a dual modality DME device that is not equivalent to a muscle stimulator only.
14. The muscle stimulation modality is useful in relaxing muscle spasms, increasing range of motion, and increasing local blood supply, while the interferential current modality is useful in providing acute pain relief and in managing chronic pain.
15. The rates at which RS Medical billed, which are its usual rates, were fair and reasonable.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
3. Under 28 TEX. ADMIN. CODE § 148.14(a), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.
4. SORM did not meet its burden of proving that RS Medical should be reimbursed at rates lower than the rates at which it billed.
5. SORM should be required to reimburse RS Medical at the billed rates for the RS4i neuromuscular stimulator provided on the disputed dates of service.

ORDER

IT IS, THEREFORE, ORDERED that the State Office of Risk Management shall reimburse RS Medical at the billed rates for the RS4i neuromuscular stimulator provided on the disputed dates of service.

SIGNED November 16, 2005.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**